

**Iowa Telecommunications & Technology Commission
Grimes State Office Building, 1st Floor
400 E. 14th Street, Des Moines, IA 50319**

FINAL

June 26, 2013

To ensure the most efficient use of State resources, the June 26, 2013, ITTC meeting was held via conference call pursuant to Iowa Code section 21.8. A conference call also ensured more Commissioners were able to participate in the meeting and reduced the risk of delays caused by weather or other impediments to travel. The meeting was accessible to members of the public through attendance at the Grimes State Office Building.

Commissioners Present

Richard Bruner, Chair (on-site)
Robert R. Hardman, Member (via teleconference)
Mary Sellers, Member (via teleconference)
Kathleen Kohorst, Member (via teleconference)
Tim Lapointe, Member (via teleconference)
Mary Mosiman, Ex-Officio Member (on-site)

Iowa Communications Network Staff Present:

Dave Lingren, Executive Director
Mark Johnson, Administration Director
Phil Groner, Business Services Manager
David Marley, Network Operations and Engineering Manager
Ric Lumbar, Network Operations and Engineering Director (via teleconference)
Deb Evans, Finance Manager
Lori Larsen, Communications Director
Jontell Harris, Director of Government Relations
Helen Troyanovich, Product Engineering and Delivery Manager
Darcy Pech, Marketing and Communications Specialist
Marcia Page, Executive Secretary
Carmelita Doke, Receptionist (Recorder)

Guests:

Meghan Gavin, Attorney General's Office
Joe Hrdlicka, Iowa Telecommunications Association (ITA)
Calvin Craib, Mediacom (via teleconference)
John Hendel, Warren Communications (via teleconference)
Larry Thompson, Vantage Point (via teleconference)
Doug Eidahl, Vantage Point (via teleconference)
Kristy Szabo, Vantage Point (via teleconference)
Matt Ives, Keokuk County Health Center (via teleconference)
Lynn Reasor, Keokuk County Health Center (via teleconference)
Randy Fowler, RJMS Associates (via teleconference)
Matt McCoy, State Senator (via teleconference)
Jason Noble, Des Moines Register
Ed Pardini, Mediacom
Mike Wiser, Lee Enterprises
Todd Thorson, Keisling and Associates
Sheila Navis, Rural Iowa Independent Telephone Association (RIITA)
Art Spies, Iowa Hospital Association (IHA)/IRHTP
Dave Duncan, Iowa Telecommunications Association (ITA)
Sean Cory, CenturyLink

Ken Bosier, Judicial Branch
Anna Hyatt-Crozier, House Democratic Staff
Mike Eggle, Iowa Network Services (INS)
Lincoln Grimes, Iowa Network Services (INS)

Call to Order

Chair Bruner called the meeting to order at 10:55 a.m. It was noted that a quorum of members was present for the meeting.

Table the Approval of the 5/16/2013 Meeting Minutes

Commissioner Bruner moved to table the approval of the 5/16/2013 ITTC minutes.

New Business:

Action – Waiver Approval – Phil Groner

Des Moines Area Community College (DMACC) – There are two waiver requests from one user, Des Moines Area Community College. The waivers have been separated into two requests because they effect two different locations and two separate services. DMACC is requesting additional capacity and alternate routing for internet services at the DMACC Ankeny campus location. Also, they are requesting additional capacity and alternate routing for Internet services at the West Des Moines campus location. As Internet is such an integral part of their education, it is really incumbent upon them to seek out not only additional capacity but alternative carrier paths to ensure diversity and redundancy for the services. At the Ankeny campus, they do enjoy redundancy on the ICN network. Being a Part I site, they have built-in redundancy on the ICN rings. However, to truly ensure Internet redundancy, it is a valid business decision to try and obtain a separate carrier path for that Internet.

Commissioner Kohorst moved to approve the Des Moines Area Community College (DMACC) waivers. Commissioner Hardman seconded the motion.

Commissioner Hardman – Yes
Commissioner Kohorst – Yes
Commissioner Lapointe – Yes
Commissioner Sellers – Yes
Commissioner Bruner – Yes

Action – Recommendation on the Sale/Lease of the ICN – Dave Lingren

House File (HF) 45 was passed during the 2011 Legislative session. The Legislature gave the ITTC a mandate to prepare an RFP, which has been completed. Commissioner Bruner mentioned he appreciated all of the work, time, effort and expense that has gone into the RFP project.

House File 646, Sec. 55, amends House File 45, Section 8 (2011):

House File 45 – Sec. 8. SALE OR LEASE OF IOWA COMMUNICATIONS NETWORK.

The Iowa telecommunications and technology commission shall implement a request for proposals process to sell or lease the Iowa communications network. The request for proposals shall provide for the sale to be concluded or the lease to commence during the fiscal year beginning July 1, ~~2014~~ 2012.

The commission shall condition the sale or lease of the Iowa communications network with terms that will allow existing authorized users of the network to continue such use at a lower overall long-term cost when compared to the anticipated operation and maintenance costs if state ownership and control were to continue. Public funds shall not be used to secure the purchase of the network. The commission shall submit periodic status reports to the general assembly at three-month intervals, beginning on October 1, 2011, regarding the progress made toward selling or leasing the network. The prior authorization and approval requirements specified in section 8D.12 shall be complied with prior to a sale or lease of the network pursuant to this section.

Dave Lingren – Base Proposal

Lingren: “Thank you to all of the potential offerors who spent a lot of time, posed a lot of good questions and stuck with the ICN during the RFP process. We were limited on how we could share information, which proved to be challenging for us at times and was also challenging for potential offerors. I appreciate you working with us through all of that. Also, I want to thank the ICN Management Team who completed the evaluation of the proposals then explained it all to me. I may at times defer to some of the staff to provide details as needed.”

ICN felt it was important to create an RFP Implementation Team (RIT) to assist with the creation of the RFP. The RIT consisted of stakeholders, legislative representatives, the Governor’s Office, and the Attorney General’s Office so that ICN had an opportunity to make sure that as the RFP was constructed, we were being as fair and open as possible. Most of the RFP was constructed from the input in those RIT meetings. Thanks to those people who spent a lot of time in those meetings providing input. After the RFP was released, potential offerors were given the opportunity to gather information. A Resource Room was created to provide detail and due diligence for potential offerors. ICN then evaluated the proposals after receiving two offers from Iowa Network Services (INS). The team then reported to Dave Lingren. Now the commission will provide a recommendation which will be submitted to the Governor’s Office. Mark Johnson and Dave Lingren will deliver the recommendation for the Commission.

Commissioner Bruner complimented INS and INS staff on all of the work that went into the RFP proposals.

Commissioner Bruner stated that the Commission has an obligation to ensure that the offers protect the public interest and tax payers of Iowa.

Clarification

Commissioner Lapointe: The agenda still says “closed session” but I think Dave Lingren clarified that it no longer needs to be discussed in closed session.

Dave Lingren: Meghan Gavin is present and serves as a representative from the Attorney General’s Office. If the meeting requires closing the session due to confidentiality reasons, Meghan will guide us to that. We do not anticipate needing a closed meeting so we will keep the dialogue as open as possible.

Dave Lingren offered a question and answer session with media representatives following the meeting. Summary information will be released at that time.

The ICN received two proposals from Iowa Network Services (INS). The first proposal included two components. The initial part of proposal number one had four components figured into the bid value.

The first included a cash offer of \$12.7 million. The next component was \$3.4 million of estimated rights-of-way (ROW) expense that INS would be paying over a five year period. Then \$5.2 million of sales and property tax over a five year period. The fourth category that is identified is \$36.1 million of ICN losses. ICN is unsure how that number was calculated. However, ICN does not have any losses in any one year period. It could be misleading because the ICN has to follow the General Accepted Accounting Principles (GAAP). If one line item, operating loss, is taken and calculated over five years, then it would seem that the ICN has a significant operating loss. However, that would not include some of the amounts that ICN cannot count as operating revenue, such as appropriated dollars, federal grant dollars and interest income. ICN includes the expenditure associated with the appropriation as well as the expenditure associated with grant money. If those non-operating incomes are taken and calculated, there is actually no loss. In fact, there is an asset gain for the years.

As a State agency, the ICN is required to file several reports that were not only within the RFP but provided in the RFP Resource Room. ICN did verify with the Department of Management (DOM), that the assessment of this situation is correct and the ICN does not have a loss. That \$36.1 million amount included in the initial offer must be removed and not considered. It will be removed from all of the offers going forward and would need to be reduced from the net offer.

The language in HF 45 states that public funds cannot be used for the purchase of the network. The ROW expense, though they are not drawing public funds, increases the value of the offer by using public fund calculations of ROW and sales/property tax. Relevant in the second part of proposal number one, there is a difference between the calculations used by INS for ROW of \$3.4 million over five years where the ICN estimate is \$10 million over five years. It is only relevant when the alternate bid is examined within proposal number one, which increases the offer to \$16.1 million if the ROW fees are waived. Waiving of the ROW fees once again brings into question public funds being used for the purchase because those are public tax dollar ROW fees that would be used as part of the offer.

Sales and property tax, again, ICN is unable to verify or confirm the \$5.2 million and there is question as to whether or not that represents public monies being used to increase the value of the offer. Of the two offers included in proposal number one, both offers of \$12.7 million without a waiver of ROW and \$16.1 million offer with ROW, ICN is only able to confirm the net cash offer of \$12.7 million.

Also identified within the offer, capitol complex data revenues are questioned by INS. This was a very confusing issue throughout the RFP process. The logistics of that is the ICN has long-term Indefeasible Rights of Use (IRU's) with the Department of Administrative Services (DAS-ITE), soon to report to the Chief Information Officer (CIO). They manage the fiber, light it and provide all the services to the agencies on the Capitol Complex. ICN simply provides services to ITE. After conferring with the CIO, it was determined to not be a part of the sale, because it is not a part of the original Iowa Communications Network. It was introduced under the Culver administration to provide redundant service of data on the complex and was a separate issue, uniquely for the complex.

INS commits to the replication of the ICN billing system. It is unclear if INS understands the individualized billing services provided by the ICN to its customers and whether or not the agencies will incur additional costs in the form of staff time if billing is "migrated" to the INS billing system.

The INS offers anticipate new service opportunities. ICN has reviewed those new services and ICN currently offers those services thanks to the completion of Broadband Technology Opportunities

Program (BTOP) or the services will be offered at the end of this month. For example, Internet Based Video offering becomes available generally on July 1.

With potential to expand access and benefits to the private sector and Iowans, the major issues we had to consider are public safety and security. If the network is opened up to public access and it becomes part of the public switch telephone network, it has been identified by the National Guard as a potential security risk as they bring in cyber security and drone operations through the network connecting the Air National Guard at the airport to the proposed uplink facility out at Camp Dodge, where it is secure in that environment. Concerns also exist with the Department of Public Safety (DPS) and many county and local law enforcement communities with regard to the statewide interoperability network called "Firstnet". The federal requirements indicate that it is desired that project utilize a State asset and a closed environment to reduce cost to the Federal government/National Telecommunications and Information Administration (NTIA). The project is already in existence but the first two years is planning. The actual build out of "Firstnet" will begin in 2016. The National Guard has identified that they would have to expend significant resources and create different encryption models if the network was taken into a public switch telephone network environment.

The recommendation of the staff, based upon the summaries, is that the proposal, both parts one and two, not be accepted by the commission.

Chairperson Bruner opened the meeting up for discussion and questions.

Discussion

Q: Commissioner Lapointe - Did you receive formal comments from other entities regarding the unfair competitive advantage or other issues? Or voicing displeasure with the prospect of accepting these proposals?

A: Lingren - That leads us into some of the confidentiality issues under an RFP that we had to adhere to. We couldn't really communicate much about the offers until this time to make sure that we were not violating the RFP language that says that the information must remain confidential. I do want to point out, that one of the reasons behind the recommendation to not accept the proposal is that we are just now completing a \$25 million enhancement project. \$16.8 million of it is funded by the Federal government, the rest is taken out of ICN cash reserves to upgrade the network and make it unquestionably state-of-the-art. The offer would not even address that \$25 million upgrade. It also still does not address the initial investment that was made into the network for the years that it was created and built.

Commissioner Lapointe moved that the Commission deny the base proposals for the purchase of the network based upon the reasoning proposed by Director Dave Lingren. Commissioner Kohorst seconded the motion.

Commissioner Hardman – Yes
Commissioner Kohorst – Yes
Commissioner Lapointe – Yes
Commissioner Sellers – Yes
Commissioner Bruner – Yes

Dave Lingren – *Alternate Proposal*

The alternate proposal has the same four categories that were identified in the base proposal and adds a fifth one. It identifies cash to be paid: ROW – 3.4million, Sales and property tax - \$5million, and ICN losses of \$36.1 million. The cash offer of \$1 is being made in this proposal, so when you total all of those amounts, the offer is \$44.5 million but again, we point out that the \$36.1 million in losses is inaccurate and I did want to mention that there are no appropriations made to the ICN to recover any losses. ICN operates in the positive on a cash receive, selling of services model. Again, there is question as to public funds being used for ROW and sales/property tax expenses.

The fifth column is using E-Rate funding. E-rate funding is when you pay your wire-line telephone bill, whether you are a corporation or a resident, there is a component called the Universal Service Fund (USF). It is a tax on that service that is collected by the Federal Communications Commission (FCC) through their subsidiary or an organization they contract with called Universal Service Administrative Company (USAC). USAC administers that tax and until recently, they were administering some of those funds to companies that are providing out to the rural environments that have high costs in delivering services because of the smaller populations and larger geographic spreads between them. They would use those funds to help pay for the provisional services but the component that the ICN is involved with is the part that allows educational users and libraries to procure connectivity as well as Internet services and Video with a discount rate. These users receive a discount on service utilizing the Universal Service funds or what they call the E-rate program. INS has identified that they would use E-rate funding for network investments. This brings into question again the use of public monies for the offer because the service fund is public money. The second issue is that the investments would be made into the Part III lease connections, which are not a part of what the ICN can sell. The ICN does not own the Part III lease connections, those are owned by private entities that the ICN leases back. The only part that is being sold at this time is the State owned network asset. The \$15.9 million dollar investment is not in that part of the network and it is questionable as to whether or not it is the use of public funds which is not allowed. So the net, based upon what we can evaluate, is a \$1 offer.

The recommendation by the staff is that this proposal not be accepted by the Commission.

Commissioner Bruner opened the meeting up for discussion and questions.

Commissioner Lapointe moved that the Commission deny the alternate proposal for the purchase of the network based upon the reasoning proposed by Director Dave Lingren. Hardman seconded the motion.

Discussion

Q: Commissioner Lapointe - Are we able to discuss the procedure of what happens after the Commission votes? I know that there has been written indication about the Legislature and the Governor having final say over the sale/lease but is that appropriate to explain at this point?

A: Mark Johnson - Yes, Commissioner Lapointe. Under the statute, any recommendations would have to be approved by the Legislature and the Governor. The process that has been envisioned from the beginning is that any bids would be evaluated pursuant to an RFP process. The Commission would review the bids and the evaluations, and then send its recommendation to the Governor's Office. From there, the Governor's Office would determine how to proceed with the offers and recommendations.

Q: Commissioner Lapointe- To clarify, our vote here today is for a recommendation for the rejection of the bid?

A: Mark Johnson- Correct.

Commissioner Hardman – Yes
Commissioner Kohorst – Yes
Commissioner Lapointe – Yes
Commissioner Sellers – Yes
Commissioner Bruner – Yes

Other Business – Executive Director, Dave Lingren

No other business.

Discussion

Q: Commissioner Lapointe - Did we have a budget to discuss?

A: Dave Lingren - We have deferred the budget until next month's meeting, not knowing how long this meeting was going to take.

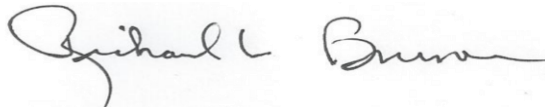
A: Commissioner Lapointe - That is fine.

Dave Lingren offered a question and answer session with media representatives following the meeting. Summary information will be released at that time.

Adjournment

Commissioner Sellers moved that the meeting be adjourned. Hardman seconded. The ITTC meeting adjourned at 11:30 a.m.

ATTESTED TO:



Richard Bruner, Chair, Iowa Telecommunications and Technology Commission